

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

|                           |   |                                |
|---------------------------|---|--------------------------------|
| UNITED STATES OF AMERICA, | : |                                |
|                           | : |                                |
| Plaintiff,                | : |                                |
|                           | : |                                |
|                           | : |                                |
| v.                        | : | Criminal Action No. 07-113-SLR |
|                           | : |                                |
| COREY ROANE,              | : |                                |
|                           | : |                                |
| Defendant.                | : |                                |

**GOVERNMENT’S UNOPPOSED MOTION FOR PARTIAL RELIEF FROM  
SEQUESTRATION ORDER**

**NOW COMES** the United States of America, by and through Colm F. Connolly, United States Attorney for the District of Delaware, and Lesley F. Wolf, Assistant United States Attorney for the District of Delaware, and moves for partial relief from the Court’s order of December 20, 2007. (D.I. 24.) In support thereof, the government states as follows:

1. On December 19, 2007, the Court held an evidentiary hearing regarding Defendant’s Motion to Suppress Evidence.
2. During the hearing, defense counsel, for the first time, requested the opportunity to call the case agent, ATF Special Agent Paul Gemmato as a defense witness. Because Defendant had failed to comply the requirements for subpoenaing a federal agent the request was denied. However, the Court did grant Defendant’s request to sequester Agent Gemmato for the remainder of the hearing.
3. After the testimony of two Wilmington Police Department officers, the hearing was continued to February 20, 2008. This continuance was necessitated by Defendant’s oral motion for the recusal of Assistant United States Attorney Lesley Wolf so that she might be called as a

witness (a motion which has since been abandoned) and to permit Defendant to go through the proper process to secure the appearance and testimony of Agent Gemmato.

4. On December 20, 2007, the Court issued an order stating “that the case agent and police officers involved in the events in issue are prohibited from speaking to each other or counsel about the substance of their testimony or the case in general.”

5. Defendant has now served a subpoena upon Agent Gemmato, through agency counsel. In accordance with the applicable federal regulations, the subpoena must specify areas of examination, and Agent Gemmato will be permitted only to testify regarding those questions previously set forth in the subpoena. See 28 CFR § 16.21 et seq.; United States ex rel Touhy v. Ragen, 340 US 462 (1951).

6. When the Order was issued, Defendant asserted that he needed to call the Assistant United States Attorney as a witness in the matter. As evidenced by Defendant’s Motion for Production of Impeachment Material (D.I. 26), the defense has abandoned this position. (D.I. 26, 1.)

7. Had Defendant subpoenaed Agent Gemmato in advance of the evidentiary hearing, the Assistant United States Attorney would have the opportunity to review the subpoena and prepare the witness prior to his testimony. The disclosure requirements are designed to allow for such preparation and to ensure that the agent does not testify beyond the authorized scope. However, under the Court’s December 20, 2007 Order, such preparation is forbidden.

8. The United States will be unfairly prejudiced by its inability to prepare Agent Gemmato for his testimony.

9. Accordingly, the United States respectfully requests that the Court modify its December 20, 2007 Order to permit Agent Gemmato and members of the United States

Attorney's Office to discuss the substance of his testimony, as it relates to the topics set forth in the subpoena. Counsel for the government and Agent Gemmato will not discuss the testimony of any other witnesses or any other aspect of the case. Moreover, although Ms. Wolf's status as a witness is no longer at issue, Ms. Wolf will not participate in the preparation.

10. Defendant, through his counsel, has no objection to this motion.

WHEREFORE, the United States respectfully requests that the Court modify its Order of December 20, 2007, to allow the United States to speak with ATF Special Agent Paul Gemmato regarding the topics of examination set forth in the subpoena served by Defendant.

Respectfully submitted,

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United States Attorney

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